

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: JEAN-CLAUDE PERCHERON, ET AL.)
SERIAL NO: 09/744,600) Group Art Unit: 3677
FILED: January 26, 2001) Examiner:
FOR: SINGLE-PIECE FOR MAKING A CABLE) Sandy, R. J.
ANCHORING JAW AND METHOD) Confirmation No. 1630
FOR MAKING SUCH A JAW)

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705

Commissioner of Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Examiner Sandy:

In Response to the Notice of Allowance issued June 26, 2009, and the Corrected Notice of Allowance issued August 19, 2009, Applicant respectfully requests a Patent Term Adjustment in accordance with the below Remarks.

REMARKS

Applicant respectfully notes that the Corrected Notice of Allowance issued August 19, 2009 indicates a Patent Term Extension of 0 days. For at least the below reasons, Applicant respectfully traverses this finding, and requests a Patent Term Adjustment under 37 C.F.R. §1.705.

37 C.F.R. §1.705 sets forth the following:

(a) The notice of allowance will include notification of any patent term adjustment under 35 U.S.C. 154(b).

(b) Any request for reconsideration of the patent term adjustment indicated in the notice of allowance, except as provided in paragraph (d) of this section, and any request for reinstatement of all or part of the term reduced pursuant to § 1.704(b) must be by way of an application for patent term adjustment. An application for patent term adjustment under this section must be filed no later than the payment of the issue fee but may not be filed earlier than the date of mailing of the notice of allowance. An application for patent term adjustment under this section must be accompanied by:

(1) The fee set forth in § 1.18(e); and

(2) A statement of the facts involved, specifying:

(i) The correct patent term adjustment and the basis or bases under § 1.702 for the adjustment;

(ii) The relevant dates as specified in §§ 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled;

(iii) Whether the patent is subject to a terminal disclaimer and any expiration date specified in the terminal disclaimer; and

(A) Any circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704; or

(B) That there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(c) Any application for patent term adjustment under this section that requests reinstatement of all or part of the period of adjustment reduced pursuant to § 1.704(b) for failing to reply to a rejection, objection, argument, or other request within three months of the date of mailing of the Office communication notifying the applicant of the rejection, objection, argument, or other request must also be accompanied by:

(1) The fee set forth in § 1.18(f); and

(2) A showing to the satisfaction of the Director that, in spite of all due care, the applicant was unable to reply to the rejection, objection, argument, or other request within three months of the date of mailing of the Office communication notifying the applicant of the rejection, objection, argument, or other request. The Office shall not grant any request for reinstatement for more than three additional months for each reply beyond three months from the date of mailing of the Office communication notifying the applicant of the rejection, objection, argument, or other request.

(d) If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements

of paragraphs (b)(1) and (b)(2) of this section. Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues.

(e) The periods set forth in this section are not extendable.

(f) No submission or petition on behalf of a third party concerning patent term adjustment under 35 U.S.C. 154(b) will be considered by the Office. Any such submission or petition will be returned to the third party, or otherwise disposed of, at the convenience of the Office.

FACTS

Each of the above portions of will now be discussed in turn 37 C.F.R. §1.705.

With reference to **C.F.R. §1.705(a)**, Applicant respectfully notes that the Corrected Notice of Allowance issued August 19, 2009 does not indicate a Patent Term Extension. Applicant respectfully traverses this finding.

With reference to **37 C.F.R. §1.705(b)**, the fee set forth in § 1.18(e) is respectfully provided herewith.

In addition, Applicant respectfully references § 1.702(a)(2) and § 1.703(a)(2) in order to determine the correct patent term adjustment. According to § 1.702(a)(2) The USPTO must “respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken.”

In this case, the reply under 35 U.S.C. 132 was a Response to Restriction Requirement that was mailed on February 27, 2002. The Response was timely filed on March 27, 2002. Yet for various reasons, including an improperly issued notice of

Abandonment (which was later withdrawn in the Decision on Petition mailed February 17, 2009), Applicant's Response was not responded to until issuance of the Notice of Allowance issued June 26, 2009. Since the four month period for Response by the USPTO to Applicant's Response of March 27, 2002 expired on July 27, 2002, Applicant respectfully asserts that the Patent term should be adjusted to include another day for every day between July 28, 2002 and June 26, 2009. This time period amounts to 2,525 days that should be added to Applicant's Patent Term.

As there has not been a Terminal Disclaimer filed in this Application, Applicant respectfully asserts that 37 C.F.R. §1.705(b)(2)(iii) does not apply.

However, with reference to 37 C.F.R. §1.705(b)(2)(iii), Applicant does note a failure to file a Petition to Withdraw the Holding of Abandonment within two months of a Notice of Abandonment. Applicant respectfully points out that a Notice of Abandonment was mailed in this Application on August 12, 2002. On November 6, 2002, Applicant respectfully filed a Petition to Withdraw the Holding of Abandonment. Since, under 37 C.F.R. §1.704(c)(4) "Failure to file a petition to withdraw the holding of abandonment or to revive an application within two months from the mailing date of a notice of abandonment, [results in] the period of adjustment set forth in § 1.703 [being] reduced by the number of days, if any, beginning on the day after the date two months from the mailing date of a notice of abandonment and ending on the date a petition to withdraw the holding of abandonment or to revive the application was filed," Applicant's term adjustment should be reduced by the 24 days between October 13, 2002 (the day after the date two months from the mailing date of a notice of abandonment) and November 6, 2002.

Accordingly, Applicant's total Patent Term Adjustment should be 2,525 days minus 24 days, which equals 2,501 days

Since Applicant replied to all rejections, objections, arguments, or other request within three months of the date of mailing of the Office communication, and since

Applicant is not a third party and is filing this Application for Adjustment prior to payment of the Issue Fee, 37 C.F.R. §1.705(c)-(f) do not apply here.

Applicant further respectfully notes that the above facts are corroborated by the Petition and Renewed Petition to Withdraw Abandonment, with postcards indicating filing dates, (attached herewith), which were GRANTED in the Decision on Petition mailed February 17, 2009.

Please charge any fees due with respect to this application, or otherwise, to
Deposit Account No. 06-1130 maintained by Applicants' attorneys.

The Office is invited to contact Applicants' attorneys at the below-listed
telephone number regarding the present application or otherwise concerning this
application for patent.

Respectfully submitted,

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